

Assembly Bill No. 1051

Passed the Assembly August 16, 1999

Chief Clerk of the Assembly

Passed the Senate July 15, 1999

Secretary of the Senate

This bill was received by the Governor this _____ day
of _____, 1999, at _____ o'clock ____M.

Private Secretary of the Governor

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CHAPTER _____

An act to amend Sections 9053, 9100, and 9250 of, to add Sections 104.5 and 1214 to, and to repeal Section 1218 of, the Probate Code, relating to decedent's estates.

LEGISLATIVE COUNSEL'S DIGEST

AB 1051, Kaloogian. Estates: claims.

(1) Existing law governs the disposition of community and quasi-community property.

This bill would establish a presumption that the transfer of community and quasi-community property to a revocable trust is an agreement that those assets retain their character in aggregate for purposes of any division provided by the trust.

(2) Existing law provides for the administration of decedents' estates and the administration of claims against an estate.

This bill would eliminate the requirement that a creditor of an estate establish that his or her attorney had no actual knowledge of the administration of the estate in order to establish liability upon the part of the personal representative for failure to notify the creditor of the administration of the estate; revise the requirements for notifying a creditor of the allowance or rejection of his or her claim; and make technical changes.

(3) Existing law requires a creditor who files a claim during the administration of a decedent's estate to file before the expiration of the later of either 4 months after the date letters of administration are first issued or 60 days after the date notice of administration is given to the creditor, if notice is at least 60 days prior to the expiration of a specified one-year statute of limitations.

This bill would delete the requirement that the notice be at least 60 days prior to the expiration of the one-year statute of limitations.



The people of the State of California do enact as follows:

SECTION 1. Section 104.5 is added to the Probate Code, to read:

104.5. Transfer of community and quasi-community property to a revocable trust shall be presumed to be an agreement, pursuant to Sections 100 and 101, that those assets retain their character in the aggregate for purposes of any division provided by the trust. This section shall apply to all transfers prior to, on, or after January 1, 2000.

SEC. 2. Section 1214 is added to the Probate Code, to read:

1214. If a notice or other paper is required or permitted to be mailed, delivered, served, or otherwise given to a person who is represented by an attorney of record, the notice or other paper shall also be mailed to this attorney, unless otherwise specified in a request for special notice.

SEC. 3. Section 1218 of the Probate Code is repealed.

SEC. 4. Section 9053 of the Probate Code is amended to read:

9053. (a) If the personal representative believes that notice to a particular creditor is or may be required by this chapter and gives notice based on that belief, the personal representative is not liable to any person for giving the notice, whether or not required by this chapter.

(b) If the personal representative fails to give notice required by this chapter, the personal representative is not liable to any person for the failure, unless a creditor establishes all of the following:

(1) The failure was in bad faith.

(2) The creditor had no actual knowledge of the administration of the estate before expiration of the time for filing a claim, and payment would have been made on the creditor's claim in the course of administration if the claim had been properly filed.

(3) Within 16 months after letters were first issued to a general personal representative, the creditor did both of the following:



(A) Filed a petition requesting that the court in which the estate was administered make an order determining the liability of the personal representative under this subdivision.

(B) At least 30 days before the hearing on the petition, caused notice of the hearing and a copy of the petition to be served on the personal representative in the manner provided in Chapter 4 (commencing with Section 413.10) of Title 5 of Part 2 of the Code of Civil Procedure.

(c) Nothing in this section affects the liability of the estate, if any, for the claim of a creditor, and the personal representative is not liable for the claim to the extent it is paid out of the estate or could be paid out of the estate pursuant to Section 9103.

(d) A personal representative has a duty to make reasonably diligent efforts to identify reasonably ascertainable creditors of the decedent.

SEC. 5. Section 9100 of the Probate Code is amended to read:

9100. (a) A creditor shall file a claim before expiration of the later of the following times:

(1) Four months after the date letters are first issued to a general personal representative.

(2) Sixty days after the date notice of administration is given to the creditor. Nothing in this paragraph extends the time provided in Section 366.2 of the Code of Civil Procedure.

(b) A reference in another statute to the time for filing a claim means the time provided in paragraph (1) of subdivision (a).

(c) Nothing in this section shall be interpreted to extend or toll any other statute of limitations or to revive a claim that is barred by any statute of limitations. The reference in this subdivision to a “statute of limitations” includes Section 366.2 of the Code of Civil Procedure.

SEC. 6. Section 9250 of the Probate Code is amended to read:

9250. (a) When a claim is filed, the personal representative shall allow or reject the claim in whole or in part.



(b) The allowance or rejection shall be in writing. The personal representative shall file the allowance or rejection with the court clerk and give notice to the creditor as provided in Part 2 (commencing with Section 1200) of Division 3, together with a copy of the allowance or rejection.

(c) The allowance or rejection shall contain the following information:

- (1) The name of the creditor.
- (2) The total amount of the claim.
- (3) The date of issuance of letters.
- (4) The date of the decedent's death.
- (5) The estimated value of the decedent's estate.

(6) The amount allowed or rejected by the personal representative.

(7) Whether the personal representative is authorized to act under the Independent Administration of Estates Act (Part 6 (commencing with Section 10400)).

(8) A statement that the creditor has three months in which to act on a rejected claim.

(d) The Judicial Council may prescribe an allowance or rejection form, which may be part of the claim form. Use of a form prescribed by the Judicial Council is deemed to satisfy the requirements of this section.

(e) This section does not apply to a demand the personal representative elects to treat as a claim under Section 9154.



Approved _____, 1999

Governor

